

## R E M A R K S

The office action of March 7, 2006 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is requested. Claims 1 through 28 remain in this case.

### STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

The Applicant's attorney, Meghan Van Leeuwen, had telephone interviews with the Examiner, Maria Guerrero, on March 13, 2006 and March 14, 2006.

There were no exhibits shown or demonstrations exhibited during the telephonic interview.

All of the pending claims were discussed in the interview. No prior art was discussed during the interview.

During the March 13<sup>th</sup> telephone call, The Applicant's attorney pointed out that she believed that the provisional double patenting rejection was improper. More specifically, the Applicant's attorney read to the Examiner the paragraph in M.P.E.P. 804 that states that if an ODP is the only rejection remaining on the earlier filed of two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw the ODP rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. The relevant section of the M.P.E.P. is quoted below in this response.

The Examiner stated that the other case was not assigned to her, and she therefore issued a provisional double patenting rejection. The Applicant's attorney then asked where in the M.P.E.P. it said that the ODP should only be withdrawn if the same Examiner had both cases. The Examiner stated that she needed to review the case and the relevant section of the M.P.E.P. and would call the Applicant's attorney back the next day.

During the March 14<sup>th</sup> telephone call, the Examiner explained that, although the Applicant's argument appeared to be strong, the Applicant's attorney would have to file an

official response to the office action so that she could consider it on the record. The Applicant's attorney agreed to file the response.

Applicant believes that this statement satisfies the requirements to file a Statement of the Substance of the Interview, and accurately represents the substance of the interview conducted. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' agent would advance the prosecution of the case to finality, she is invited to telephone the undersigned at the number given below.

### **Double Patenting Rejection**

Claims 1-28 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29, 37 and 43 of copending Application No. 10/763,461.

Applicant respectfully submits that this rejection is improper. The present application was filed on October 27, 2003, and is a divisional application of parent Application Serial No. 09/851,730, filed on May 9, 2001. Copending Application Serial No. 10/763,461 was filed on January 23, 2004, and is a divisional application of parent Application Serial No. 10/456,377, filed on June 6, 2003. Clearly, this application was filed earlier than Application Serial No. 10/763,461.

The M.P.E.P. specifically states that "[i]f a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn." (M.P.E.P. 804, I, B, 1, first paragraph)

The only rejection remaining in this case is the obviousness type double patenting rejection the Examiner issued in the present office action. There is currently no double patenting rejection in copending Application Serial No. 10/763,461 and there is nothing on the record to

indicate that the claims in Application Serial No. 10/763,461 are not patentably distinct over the claims in this case. Therefore, the cited paragraph from the M.P.E.P. applies, and the Examiner should withdraw the ODP rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

### Conclusion

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, she is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Respectfully Submitted:

*Ledentsov*

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Dated: 3/14/06